



Feb. 18, 2021

VIA ECF

Hon. Barbara Moses, U.S.M.J.
United States District Court
Southern District of New York
500 Pearl St., NY, NY 10007

MEMO ENDORSED

Re: Michelo et al. v. Nat'l Collegiate Student Loan Trust 2007-2 et al., 18-CV-1781
Bifulco et al. v. Nat'l Collegiate Student Loan Trust 2004-2 et al., 18-CV-7692

Dear Judge Moses:

The Parties jointly request extension of the current discovery deadline in the *Michelo* and *Bifulco* actions (Feb. 22, 2021) in light of Judge Gardephe's ruling two days ago and other events in recent days.

The Court's Feb. 16 ruling rejected TSI's objections to Your Honor's denial of TSI's motion to quash the deposition of "Affiant X."¹ The Parties will not be able to complete this deposition by Feb. 22, and therefore request the deadline be extended for the purpose of completing this and other remaining outstanding discovery issues. While the parties may continue to make rolling productions of documents previously requested after this deadline, discovery is otherwise closed absent court order. These outstanding issues require additional time:

- TSI may have substantial documentary production to complete once Judge Gardephe rules on TSI's objections to Your Honor's Oct. 23, 2020 order that documents from the CFPB investigation be produced. This outstanding item will be completed upon issuance of Judge Gardephe's decision on TSI's objections.
- Plaintiffs and TSI are attempting to resolve without court intervention a dispute concerning the depositions of two of TSI's Affiants (Chandra Alphabet and Colleen Morgan). Plaintiffs and TSI are working on a resolution. Plaintiffs have proposed that the transcript of the CFPB's deposition of the subpoenaed is produced in lieu of a deposition here. TSI is considering the proposal and ability to produce transcripts, to the extent they might exist.
- Plaintiff Michelo has experienced severe health issues over the past several weeks, and it has not yet been possible to schedule a deposition date for her. Allowing her to be deposed after Feb. 22 greatly reduces the likelihood she would be forced to choose between cancelling vital appointments, and appearing for her deposition. Defendants have no objection to continuing Plaintiff Michelo's deposition to a date when her condition will allow.

¹ See Dkt. No. 254 in Case No. 18-cv-1781; Dkt. No. 184 in Case No. 18-cv-7692.

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- As to the deposition of Affiant X, TSI states the following: Recent developments have impeded TSI's ability to present Affiant X for a deposition. TSI will communicate with the Parties about this as it works through these obstacles, but it is possible a renewed motion for protective order may be necessary based on new developments.

The Parties request the extension be sine die, for now. The Parties will submit a follow-up letter to this Court no later than Feb. 25, 2021, to present specific dates for resolution of the outstanding issues.

At this time, the Parties do not anticipate the discovery extension will affect the current briefing schedule for class certification. We thank the Court for Your Honor's prompt attention to this matter.

[SIGNATURES ON FOLLOWING PAGE]

Application GRANTED IN PART. The Court is troubled by defendant TSI's apparent assumption, contrary to more than three decades of settled law, that it need not comply with this Court's October 23, 2020 order until the district judge rules on its pending objections. "The mere filing of objections does not automatically stay a magistrate's order." *Grossman v. Schwarz*, 989 WL 46594, at *1 (S.D.N.Y. Apr. 21, 1989) (citing *Litton Industries Inc. v. Lehman Kuhn Loeb, Inc.*, 124 F.R.D. 75 (S.D.N.Y. 1989)). Accord *Shim-Larkin v. City of New York*, 2019 WL 4688703, at *2 (S.D.N.Y. Sept. 25, 2019); *Thai Lao Lignite (Thailand) Co. v. Gov't of the Lao People's Democratic Republic*, 2011 WL 4111504, at *9 (S.D.N.Y. Sept. 13, 2011); *Rock Salt Co., LLC v. Norfolk S. Corp.*, 371 F. Supp. 2d 358, 360 (W.D.N.Y. 2005); *Herskowitz v. Chaney*, 1995 WL 104007, at *3 (S.D.N.Y. Mar. 8, 1995). See also 12 Wright & Miller, *Fed. Prac. & Proc.* § 3069 (3d ed.). No stay of the October 23 order having been obtained (or for that matter requested) from any judge, TSI was and is obligated to comply with that order, which by its terms required production of the disputed documents no later than November 6, 2020. By order dated December 30, 2020, I extended the deadline for production of documents (including documents concerning the CFPB investigation) to February 5, 2021, but no further.

It is hereby ORDERED that (1) the parties' deadline to complete depositions is EXTENDED to **March 19, 2021**; and (2) TSI shall SHOW CAUSE in writing, no later than **February 26, 2021**, why it should not be sanctioned pursuant to Fed. R. Civ. P. 37(b) and/or 16(f) for failure to comply with this Court's October 23, 2020 and December 30, 2020 orders.

The Clerk of Court is respectfully directed to close the letter-motions at Dkt. No. 255 in Case No. 18-CV-1781 and Dkt. No. 185 in Case No. 18-CV-7692.

SO ORDERED.



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Respectfully submitted,

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